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Attorneys for Justice Brand Holdings LLC

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

RETAIL GROUP, INC., *et al.*,¹

Debtors.

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CASE NO. 20-33113 (KRH)

CHAPTER 11

JOINTLY ADMINISTERED

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF
JUSTICE BRAND HOLDINGS LLC TO PLAN CONFIRMATION**

Justice Brand Holdings LLC (“Justice Brand Holdings”), by and through its counsel Dorsey & Whitney LLP, submits this limited objection and reservation of rights (the “Limited Objection”) with respect to confirmation of the Third Amended Joint Chapter 11 Plan of Reorganization of Ascena Retail Group, Inc. and Its Debtor Affiliates (the “Third Amended Plan”)² [Docket No. 1403], and respectfully sets forth and represents as follows:

¹ A complete list of each of the Debtors in these Chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://cases.primeclerk.com/ascena>. The location of Debtor Retail Group, Inc.’s (f/k/a Ascena Retail Group, Inc.) principal place of business and the Debtors’ service address in these Chapter 11 cases is: 933 MacArthur Boulevard, Mahwah, New Jersey 07430.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Third Amended Plan, Sale Order, and Justice APA, as applicable.

Background

1. On July 23, 2020 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
2. On October 20, 2020, the Debtors filed a motion [Docket No. 965] which sought, among other things, entry of an order:
 - a. authorizing and approving bidding procedures in connection with the sale of the right, title, and interest of the Debtors in and to certain Tween Brands, Inc. assets, including: (i) certain executory contracts and leases, if assignable under applicable law; (ii) intellectual property and rights (the “Justice Brand”) to collect royalties and proceeds in connection therewith; (iii) certain inventory; and (iv) customer data (collectively, the “Justice Assets”);
 - b. Approving the terms of the purchase agreement, dated October 20, 2020, entered into by and among certain Debtors and Justice Brand Holdings with respect to the Justice Assets (as amended, the “Justice APA”); and
 - c. Approving procedures for the assumption or assumption and assignment of certain executory contracts and unexpired leases in connection with the sale, and approving the form and manner of notice thereof.
3. On October 21, 2020, the Court entered the *Order Approving the Stalking Horse Protections, (II) Approving Bidding Procedures for the Sale of the Justice Assets, and (III) Approving Assumption and Assignment Procedures* [Docket No. 986].
4. On November 10, 2020, the Debtors reported that an auction was conducted on November 9, 2020 in compliance with the Bidding Procedures Order and determined that Justice Brand Holdings submitted the highest and best bid for the Justice Assets and was deemed the successful bidder [Docket No. 1105].
5. On November 12, 2020, the Court conducted a hearing to consider the approval of the sale of the Justice Assets to Justice Brand Holdings in the amount of seventy-one million dollars (\$71,000,000) (the “Purchase Price”), as set forth in Article II, Section 2.1 of the Justice

APA.

6. On November 12, 2020, the Court entered *the Order (I) Approving the Sale of the Justice Assets Free and Clear of All Liens, Claims and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* (the “Sale Order”) [Docket No. 1118]. The Justice APA is attached to the Sale Order as Exhibit “A.”

7. Pursuant to the Sale Order and as stated in the *Debtors’ Report for the Sale of the Justice Assets Pursuant to Local Bankruptcy Rule 6004-2*, dated December 11, 2020, [Docket No. 1306], all of the conditions to the obligations of Debtors and Justice Brand Holdings to consummate the sale of the Justice Assets were satisfied and the closing was deemed to occur and be effective as of November 23, 2020.³

8. On December 8, 2020, the Court entered the *Order (I) Approving the Assumption and Assignment of Certain Non-Real Property Contracts and Real Property Leases, (II) Approving the Sale Of Premium and Lane Bryant and Certain Other Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (IV) Establishing Rejection Procedures, and (V) Granting Related Relief* [Docket No. 1295] (the “Lane Bryant Sale Order”). Pursuant to Paragraph 51 of the Lane Bryant Sale Order, a reserve amount for payment of, among other things, “all administrative, priority, and other claims” is capped at \$242.2 million (the “Reserve Amount”).

9. On December 30, 2020, the Debtors filed the Third Amended Plan and a notice of hearing date to confirm the Third Amended Plan of February 25, 2021, with an objection deadline

³ On November 10, 2020, Justice Brand Holdings and the Debtors entered into Amendment No. 1 to the Justice APA amending certain provisions based on transactions and certain closing adjustments.

of February 4, 2021. Pursuant to Article II, Section A of the Third Amended Plan, allowed claims for administrative expenses will be paid in full in cash as of the Effective Date or as reasonably practicable thereafter.

10. On January 19, 2021, Justice Brand Holdings filed claims for administrative expenses against the Debtors: Retail Group, Inc. [Claim 5551]; Tween Brands, Inc. [Claim 5514]; Tween Brands Service Co. [Claim 5582]; and Tween Brands Investment, LLC [Claim 5583] (the “Justice Brand Holdings Claims”). The Justice Brand Holdings Claims relate to the releases of the Justice Brand to third parties that violate the terms of the Justice APA and the Sale Order (the “Prohibited Third-Party Releases”). These Prohibited Third-Party Releases may substantially diminish and dilute the value of the Justice Assets.

Limited Objection and Reservation of Rights

11. Justice Brand Holdings is in the process of investigating and evaluating the scope of the damages resulting from the Prohibited Third-Party Releases. Such damages of the Justice Brand Holdings Claims could amount to a substantial portion of the Purchase Price, in addition to the fees and costs incurred as a result of the Prohibited Third-Party Releases.

12. Notwithstanding that Justice Brand Holdings has yet to fully liquidate the Justice Brand Holdings Claims, Justice Brand Holdings objects to the Third Amended Plan to the extent the Debtors’ Reserve Amount is insufficient to pay the Justice Brand Holdings Claims and other administrative claims in full as specified in the Third Amended Plan. Justice Brand Holdings reserves its rights to payment of the Justice Brand Holdings Claim in full as an administrative expense under the Third Amended Plan and in accordance with section 1129(a)(9)(A) of the Bankruptcy Code. As such, Justice Brand Holdings respectfully requests that the Court direct the Debtors to demonstrate that they are able to pay all administrative expense claims, including the

Justice Brand Holdings Claims, in full, and all other creditors' claims as set forth in the Third Amended Plan.

13. Nothing contained herein shall be construed as a limitation or waiver of Justice Brand Holdings' right to demand payment of any additional amounts that have come due or will come due with respect to the Justice Brand Holdings Claims.

WHEREFORE, Justice Brand Holdings reserves its rights with respect to full recovery of the Justice Brand Holdings Claims and respectfully requests that the Court direct the Debtors to demonstrate that they are able to pay all administrative expense claims in full, and all other creditors' claims as set forth in the Third Amended Plan, and grant such other, further, and different relief as the Court deems just and proper.

Dated: February 4, 2021

Respectfully Submitted,

DORSEY & WHITNEY LLP,

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CERTIFICATE OF SERVICE

I certify that on February 4, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Eastern District of Virginia (Richmond Division), with notice automatically provided to all those entitled to receive the same, and by same-day/overnight mail to the following parties:

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